IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14933 OF 2025

Bharati G. Patel and another ... Petitioners
vs.
The State of Maharashtra and others ... Respondents

Mr. Karl Tamboly a/w. Mr. Malcolm Siganporia, Mr. Zubin Sheth, Mr. Raunak Sharma and Mr. Afnan Husain, i/b YNA Legal for petitioners.

Ms. M. S. Bane, AGP for respondent No.1-State.

Mr. O. A. Das a/w. Ms. Riddhi Bawdane for respondent No.2-PNB.

CORAM : MANISH PITALE & SHREERAM V. SHIRSAT, JJ

DATE : 22nd JANUARY, 2026

P.C. :

. Heard learned counsel for the parties.

2. By this petition, the petitioners have challenged order dated 28.10.2025 passed by the Debts Recovery Appellate Tribunal, Mumbai (DRAT), whereby the petitioners were directed to deposit 25% of the amount due, claimed by respondent No.2-bank, towards pre-deposit, as mandatorily required under the proviso to Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Securitisation Act).

3. In this petition, since the order of the DRAT was not uploaded, when the petition was filed and the same was taken up for consideration before the Vacation Court, on 31.10.2025, a learned Single Judge of this Court, granted interim order to the effect that physical possession of the subject property shall not be taken till the

next date of listing. Undisputedly, the said interim order has continued to operate during the pendency of this petition.

4. In this petition, reply affidavit along with voluminous documents, were placed on record by respondent No.2-bank, to impress upon this Court that petitioner No.1 and her deceased husband were guarantors for a loan disbursed in favour of the original borrower i.e. respondent No.3-M/s. Orbit Products Private Limited. By relying upon the documents submitted to respondent No.2-bank, while availing loan facility, it was claimed that this was a case of equitable mortgage by deposit of original title deed. It was claimed that the petitioner No.1 and her deceased husband were signatories to a number of documents that demonstrated that the original title deed was deposited with respondent No.2-bank.

5. A rejoinder affidavit was filed on behalf of the petitioners, refuting the claims made by respondent No.2-bank and much emphasis was placed, *inter alia*, on a criminal proceeding initiated by petitioner No.2, who is the son of petitioner No.1, in the form of complaint dated 22.01.2016, leading to FIR dated 06.02.2017, against respondent Nos.3 and 4 as also others, including bank officials, who, according to the petitioners, had conspired to dupe innocent persons like petitioner No.1 and her deceased husband as also at least 11 others. The petitioners disputed the signatures of petitioner No.1 and her deceased husband on all documents of the bank, including One Time Settlement proposal (OTS), affidavits and other such documents.

6. In this backdrop, the learned counsel for the petitioners and contesting respondent No.2 were heard at length. This Court was

required to devote considerable period of time to familiarize itself with a plethora of documents placed on record by the rival parties in support of their respective contentions.

7. The learned counsel for the petitioners submitted that the impugned order passed by the DRAT records that the rival submissions were considered and records were perused. But, there is no consideration of such material and no effort was made by the DRAT to at least consider whether the petitioners had made out a *prima facie* case, to claim that the petitioner No.1 and her deceased husband were not guarantors to the subject loan. It was submitted that such a detailed exercise and reaching *prima facie* finding was all the more necessary because a lot would turn on such a *prima facie* finding in respect of necessity of pre-deposit on the part of the petitioners for their appeal to be entertained by the DRAT. According to the learned counsel for the petitioners, in the absence of such an exercise being carried out by the DRAT, insisting upon pre-deposit of 25% of the amount due, is not justified. The DRAT has pushed the main issue in respect of which at least a *prima facie* finding was warranted to be decided, when considering the main appeal, which, according to the learned counsel for the petitioners was an erroneous approach.

8. In the process, the learned counsel for the petitioners referred to the securitisation application filed in the year 2025 before the Debts Recovery Tribunal (DRT), in which the application for interim relief was rejected, giving rise to the appeal filed before the DRAT. He also sought to rely upon the criminal complaint filed on 22.01.2016 as also FIR dated 06.02.2017, which culminated in filing of charge-sheet by the investigating authority. It was submitted that the

petitioners have stoutly denied the claim of respondent No.2-bank that petitioner No.1 and her deceased husband had signed and submitted the aforementioned documents, for facilitating disbursal of loan in favour of respondent No.3 by depositing original title deed. The learned counsel for the petitioners submitted that even today, the original title deed is in the possession of the petitioners and an attempt was made to handover the same across the bar for perusal of this Court.

9. It was submitted that this Court may consider at least remanding the matter back to the DRAT for a proper consideration of the entire material, in order to reach *prima facie* finding about the claim of the petitioners that the petitioner No.1 and her deceased husband were not the guarantors for the subject loan, before reaching any conclusion with regard to the requirement of pre-deposit to be made for the appeal being entertained.

10. On the other hand, the learned counsel appearing for the respondent No.2-bank vehemently submitted that the petitioners were all along aware about the steps taken by the said respondent, upon a loan being declared Non-Performing Asset (NPA) and steps being taken under Section 13 of the Securitisation Act and consequential steps. Despite being aware of the notice under Section 13(2) of the Securitisation Act in the year 2013, the petitioners took no steps in the matter and after about 12 years, the petitioners have filed the securitisation application in the year 2025, disputing the documents on the basis of which loan was advanced to respondent No.3. It was submitted that such a belated challenge itself shows that there is no substance in the claims made by the petitioners.

11. The learned counsel for respondent No.2-bank submitted that the original title deed was placed on record of the DRT, when the initial securitisation application of the year 2014 was being considered. According to the said respondent, the original title deed was somehow removed from the custody of the DRT, concerning the earlier securitisation application and this factor ought to be taken into consideration, while testing the submissions made on behalf of the petitioners. It was submitted that the documents placed on record by the said respondent, on the face of it, show that the petitioner No.1 and her deceased husband, were guarantors. They filed affidavits and upon default of repayment of loan, even submitted letters proposing settlements in the form of OTS, thereby demonstrating that there is no substance in the claim made by the petitioners that since they cannot be treated as guarantors, mandatory pre-deposit for entertaining the appeal, cannot be insisted upon. It was further submitted that the petitioners ought to deposit 25% of the amount due, as directed by the DRAT and therefore, the petition deserves to be dismissed.

12. We have considered the rival submissions, after devoting considerable time in the process of hearing and perusing the plethora of documents on record. We find that respondent No.2-bank relies upon all the documents that form part of the application moved for granting loan. These include documents said to be executed by petitioner No.1 and her deceased husband as guarantors, depositing the original title deed as also executing other documents. Respondent No.2-bank claims that the petitioner No.1 and her deceased husband were parties to the initial securitisation application filed in the year 2014, which was dismissed for want of prosecution. Subsequent legal proceedings undertaken by and on

behalf of the petitioners, were referred to, to claim that the petitioners cannot be heard in the year 2025 to say that all their signatures on the aforesaid documents were forged and that they cannot be treated as guarantors in respect of the aforesaid loan.

13. On the other hand, we have perused the documents relied upon by the petitioners, including criminal complaint dated 22.01.2016 leading to FIR dated 06.02.2017, culminating into charge-sheet filed against the accused persons. Much emphasis is placed on the fact that the charge-sheet indicates that, not only were respondent No.4 and others found responsible for the acts of forgery and fabrication, but certain bank officials were also arraigned as accused persons. It was also submitted that one of them is now absconding.

14. Reference was made to orders passed by the Sessions Court and this Court, while considering the bail applications of the accused. While rejecting the bail application, it was found that respondent No.4 and co-accused persons had duped many other persons, similarly situated as petitioner No.1 and her deceased husband. It was submitted that as the threats of dispossession were real and present, the petitioners were constrained to move the DRT by filing the securitisation application in the year 2025. It was submitted that none of these factors have been taken into consideration by the DRAT, while passing the impugned order. Attention of this Court was also invited to the document signed by the Registrar of DRT in the year 2017, recording that the applicant-bank had not filed the original title deed. On behalf of respondent No.2-bank, it was emphasized that the original title deed was indeed filed and recorded at Sr. No.22 in the index of documents and this fact can be deduced

from the said document dated 22.09.2017 signed by the Registrar of the DRAT.

15. The aforesaid documents on which the rival parties have placed much emphasis, clearly indicate that the DRAT was expected to consider the said documents and the rival claims made by the petitioners on one hand and respondent No.2-bank on the other. A perusal of the impugned order passed by the DRAT, shows that while the submissions made on behalf of the rival parties have been recorded briefly and it is even stated that the rival submissions were considered and records were perused, there is no detailed discussion on the documents relied upon by the rival parties, particularly from the angle of reaching a finding as to whether the petitioners had at least made out a *prima facie* case to claim that petitioner No.1 and her deceased husband could not have been treated as guarantors with regard to the subject loan.

16. We find that the DRAT was also conscious of the rival submissions made with regard to the original title deed and as to whether it was in possession of the petitioners or that the documents could show that the original title deed was initially deposited with respondent No.2-bank, which somehow was removed from the custody of the DRAT. But, there is no discussion on the rival claims pertaining to the said issue, which certainly goes to the root of the matter, even on the question as to whether the petitioners can be directed to mandatorily deposit 25% of the total amount due, as claimed by respondent No.2-bank.

17. A lot turns on the aforesaid issue, for the reason that this Court, in a recent order dated 20.01.2026, passed in Writ Petition

(Lodging) No.21712 of 2025 (Ishtiyaque Aslam Khan vs. DCB Bank and others), has reiterated the position of law that under proviso to Section 18 of the Securitisation Act, only the borrower, guarantor and the mortgager can be asked to make pre-deposit and not any other aggrieved person, who invokes Section 18 of the Securitisation Act.

18. It is an endeavour of the petitioners to demonstrate that they have sufficient material in their possession to claim that they cannot even *prima facie* be treated as guarantors and hence, mandatory pre-deposit cannot be insisted upon. This is the crux of the matter, which we find that the DRAT did not properly and elaborately consider, despite the fact that the peculiar facts and circumstances of the present case warranted detailed discussion on the material relied upon by the rival parties, before deciding the question as to whether the petitioners can be mandatorily be directed for pre-deposit of the amount, in terms of proviso to Section 18 of the Securitisation Act.

19. The failure of the DRAT to properly consider the matter has created a situation where the rival parties have made elaborate submissions before this Writ Court. We are of the opinion that the DRAT is better equipped to consider the same and therefore, the DRAT ought to reconsider the interim application filed by the petitioners, seeking waiver of pre-deposit, in the facts and circumstances of the present case. It is for this reason that we, as a Writ Court, refused to peruse the document sought to be tendered by the learned counsel for the petitioners, purporting to be the original title deed. It is for the DRAT to look into the matter.

20. In view of the above, the impugned order is quashed and set aside. The matter is remanded to the DRAT to decide Interim Application No.668 of 2025 for waiver of statutory deposit, after properly considering the entire material and documents on record. We expect the DRAT to consider the material on record, in order to reach a finding as to whether the petitioners have made out a *prima facie* case in their favour, to claim that the petitioner No.1 and her deceased husband cannot be treated as guarantors in respect of the subject loan. The question of pre-deposit will hinge upon the findings that the DRAT will reach, upon detailed and proper consideration of the rival submissions and the material on record.

21. Accordingly, the parties are directed to appear before the DRAT on 03.02.2026. The DRAT is directed to reconsider the Interim Application No.668 of 2025, in the light of the observations made hereinabove. An endeavour shall be made to decide the aforesaid interim application by the DRAT within a period of 3 weeks from 03.02.2026.

22. The interim order granted by this Court on 31.10.2025, to the effect that physical possession of the subject property shall not be taken by respondent No.2-bank from the petitioners, shall continue to operate till Interim Application No.668 of 2025 is decided.

23. It is made clear that the observations made hereinabove are limited to disposing of this petition and that the DRAT shall proceed uninfluenced by the observations made in this order.

(SHREERAM V. SHIRSAT, J.) **(MANISH PITALE, J.)**

PRIYA KAMBLI Digitally signed by PRIYA KAMBLI Date: 2026.01.23 18:39:52 +0530